

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

VEGGIE U,
a Non-profit Ohio Corporation,

Plaintiff,

V.

THE CHEF'S GARDEN, INC.,
a Ohio Corporation,

Defendant.

Case No.

COMPLAINT FOR:

DECLARATORY JUDGMENT OF OWNERSHIP OF TRADEMARK

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff Veggie U (“Veggie U” or “Plaintiff”), for its Complaint against The Chef’s Garden, Inc. (“Chef’s Garden” or “Defendant”), alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action seeking declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, that Veggie U is the owner of the trademark **VEGGIE U®** under the Lanham Act, 15 U.S.C. § 1119.
2. Pursuant to 28 U.S.C. § 1338(a), this Court has subject matter jurisdiction over the claim arising from the Lanham Act.
3. This Court has personal jurisdiction over Defendant because it is a citizen of the State of Ohio.
4. Venue in this Court exists under 28 U.S.C. § 1391(b)(1), as Defendant resides in this District, as well as under subsection (b)(2) because a substantial part of the events giving rise to the claims alleged in this Complaint occurred in this District.

PARTIES

5. Plaintiff is a Ohio non-profit corporation organized under section 501(c)(3) of the Internal Revenue Code having its principal place of business at 184 Oberlin Road, Oberlin, Ohio 44074.

6. On information and belief, Defendant is a Ohio corporation having its principal place of business at 9009 Huron Avery Road, Huron, Ohio 44839.

FACTS

Veggie U, School Kits, and Use of the VEGGIE U® Mark

7. In 2002, 16 percent of six to nineteen year olds in the United States were overweight, a figure that was more than double what it was in 1980. *Prevalence of Overweight and Obesity Among U.S. Children, Adolescents, and Adults 1999-2002*, JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 291, no. 23 (2004).

8. Although “[h]eadlines across the nation proclaim[ed] news that educators have seen with their own eyes during the past two decades: children in the United States are getting heavier and heavier,” educators’ “attention [was turned] elsewhere.” *The Role of Schools in Preventing Childhood Obesity*, THE STATE EDUCATION STANDARD, December 2004.

9. In response to this lack of nutrition education in elementary schools and to combat the epidemic of childhood obesity was born the idea one night at a farmhouse table of creating an organization dedicated to educating children on the virtues of healthy nutrition.

10. Plaintiff was formed on July 29, 2002, as a section 501(c)(3) not-for-profit corporation dedicated to increasing this country’s school children’s awareness of healthy food options by teaching them how real food reaches their plates. At the time of its formation, Plaintiff adopted the corporate name “The Research, Educational and Charitable Association for the Benefit of Chef and Farmer” (“RECABCF”). On November 30, 2004, Plaintiff submitted paperwork to the Ohio Secretary of State to use the trade name “Veggie U,” which it thereafter used in public to refer to itself. Pursuant to a resolution of Plaintiff’s Board of Directors, Plaintiff amended its articles of incorporation on April 7, 2014, and formally changed its corporate name from RECABCF to Veggie U.

11. Veggie U’s by laws provide that its mission is “to promote well-being by teaching the proper growing of vegetables and good eating habits” and to the distribution of a school lesson

plan “that focuses on making wise food choices to combat childhood obesity and related issues in both childhood and adults.”

12. Veggie U’s by laws further provide that for someone to qualify to serve as a board member or trustee for the non-profit that individual must “passionately support the vision of Veggie U.”

13. In furtherance of its mission, Veggie U came up with the idea in 2002 of supplying schools with “Classroom Gardens” – a standards based, five-week life science teaching program to elementary and special needs students.

14. Beginning in the spring of 2003 and for the next eighteen (18) months a group of a dozen Veggie U volunteer educators donated their time and energy to create the curriculum for the “Classroom Gardens” project ensuring that it meet state and national education standards for life science.

15. At the same time, Veggie U hired and paid a certified nutritionist to consult in reviewing the curriculum and in developing a nutrition section for the “Classroom Gardens” project.

16. The results of those efforts was the creation of the “Earth to Table Five-Week Science Curriculum” (“Earth to Table Teaching Manual”) in 2004. The Earth to Table Teaching Manual was composed of twenty-five (25) classroom lessons for teachers to use as part of the “Classroom Gardens” project.

17. The Earth to Table Teaching Manual was revised and amended by Veggie U in 2010.

18. Veggie U registered with the United States Copyright Office the copyright in both the 2004 and 2010 editions of the Earth to Table Teaching Manual, listing itself as the claimant to the same by written assignment and identifying the dozen Veggie U volunteer educators and the paid nutritionist as the manual’s author.

19. The “Classroom Gardens” project consists of sending kits to schools, containing the Earth to Table Teaching Manual, an instructional video, tasting vegetables or cash to buy tasting vegetables, seeds, soils, root view boxes, grow lights and worm farms (collectively “school

kits”), all allowing students to see, feel, taste and experience the process of planting, growing, and harvesting a vegetable crop in their classroom.

20. All the items contained in the school kits are either assembled by Veggie U or purchased by Veggie U from third parties.

21. Veggie U has paid substantial amounts of money to assemble and provide the school kits.

22. Veggie U created a “Kit Jobs List and Instruction” booklet setting guidelines for its volunteers to follow in assembling and packing the school kits. The booklet ensured volunteers adhered to and met Veggie U’s strict quality controls for its school kits service.

23. Veggie U also hired and paid a packaging company to fabricate the size and shape of the boxes used to ship and house the materials in the school kits.

24. In the Fall/Spring 2004-2005 school year Veggie U entered into a contract with a school district in the Erie County, Ohio to supply 15 classrooms with its school kits.

25. From this small beginning the number of classrooms serviced by Veggie U “Classroom Gardens” school kits has blossomed over time.

26. Veggie U has to date provided 6,500 classrooms in thirty-six (36) states with its “Classroom Gardens” school kits.

27. Since its formation, Veggie U has extensively and continuously used the **VEGGIE U®** mark to market its services.

28. In 2004, Veggie U developed a design logo represented below, utilizing the **VEGGIE U®** service mark to market the services it provided.



29. The principal service Veggie U provides is supplying “Classroom Gardens” school kits to school districts nationwide.

30. With respect to the school kits, Veggie U selected where the **VEGGIE U®** mark and/or design logo would be placed on the exterior of the packaging as well as where it would appear on the booklets, folders, smaller containers and other materials comprising the school kit.

31. Since 2004, Veggie U has ensured that the location and manner in which the **VEGGIE U®** mark and/or design logo has been displayed on its school kits has remained consistent to that reflected below.



32. Veggie U has also used the **VEGGIE U®** service mark and/or design logo on its website and fundraising letters. Again Veggie U selected where and how the **VEGGIE U®** mark and/or design logo would be placed in these various mediums.

33. Veggie U's also provides to subscribers a quarterly newsletter, variously called "News from Veggie U," "Veggie U Newsletter," and since 2014 "Veggie U Garden Post." The quarterly newsletter is currently emailed to approximately 5,000 individuals.

34. Veggie U has used the **VEGGIE U®** service mark and/or design logo on its quarterly newsletter as reflected below.

Veggie U Newsletter - September 2008



Thank You from Veggie U

On behalf of the Veggie U Staff, I would like sincerely thank each and every one of the volunteers, chefs and guests for the generosity and commitment to our mission during the 2008 Food & Wine Celebration. Without your contribution, the success of the event would not have been possible.

Although the heat of July was heavy, we had an outstanding turnout with close to 1000 people in attendance at our successful fundraiser. During the week prior, our volunteers worked diligently to ensure every aspect of the event was in place. We also set a record with the number of participating chefs who used their extraordinary talents to create culinary masterpieces. The generosity of our corporate sponsors and the guests who participated in the auction will allow us to work towards our goal of placing 2,500 kits this year. Words cannot express our gratitude to those who work so hard to make such a tremendous difference in our ability to create positive change in children's lives.



Bruce Siedel of The Food Network introduces Iron Chef Michael Symon, Cleveland, at the 2008 Food & Wine Celebration.

Sincerely, Debra Nickoloff, Director of Veggie U

Veggie U's Relationship with Chef's Garden

35. Chef's Garden was formed in 1998 as a for-profit corporation to grow artisanal produce and sell it directly to chefs.
36. In 2002 members of Chef's Garden formed The Culinary Vegetable Institute, Inc. ("CVI"), building a cooking school to teach chefs on the use of artisanal produce utilizing an 11,000 square foot facility located on a 100 acre working farm in Milan, Ohio.
37. Members of Chef's Garden founded Veggie U in 2002.
38. Since its formation until recently, Veggie U shared office space with CVI.
39. Throughout the period the two parties shared office space, CVI charged Veggie U rent at market rates for use of the office space.
40. Chef's Garden and CVI also charged Veggie U at market rates for any materials or supplies it provided to Veggie U.
41. In July, 2014, Veggie U found different, more affordable space and its Board of Directors resolved to relocate the non-profit's operations to a larger space better able to support the demands for Veggie U's services.
42. Veggie U thereafter relocated to its current offices in Oberlin, Ohio.

Registration of the VEGGIE U® Mark with the PTO

43. Veggie U was the first to use the VEGGIE U® service mark.
44. On August 8, 2002, Chef's Garden filed an application with the United States Patent and Trademark Office ("PTO") to register the VEGGIE U® service mark for "*Educational services,*

namely, conducting classes, seminars, workshops, and conferences in the field of horticulture and culinary arts” in Class 41.

45. On February 10, 2004, Chef’s Garden filed a Statement of Use with the PTO, representing that the **VEGGIE U®** service mark had first been used on July 29, 2002, the same date that Veggie U was founded.

46. On April 27, 2004, the **VEGGIE U®** service mark was registered under the Principal Register as Registration No. 2,837,309, listing Chef’s Garden as the owner.

47. Chef’s Garden has never itself used the **VEGGIE U®** service mark for educational or any other services. Chef’s Garden has never used the **VEGGIE U®** service mark to market any of the services it provides, *e.g.*, providing artisanal produce to chefs.

48. Since the **VEGGIE U®** service mark’s registration, Chef’s Garden has only sporadically used the mark. Even when Chef’s Garden has used the service mark, it has been solely in conjunction with Veggie U to promote Veggie U’s services and fundraising events.

49. Veggie U has since its inception controlled the nature and quality of the services the **VEGGIE U®** service mark has been used to market.

50. Veggie U paid the attorney’s fees and filing fees for the sections 8 & 15 affidavits for the **VEGGIE U®** service mark that were filed with the PTO in 2009.

51. Veggie U paid for attorney’s fees and filing fees for the renewal of **VEGGIE U®** service mark registration with the PTO in 2014.

Chef’s Garden Cease and Desist Letter

52. After Veggie U relocated to its new office space in July, 2014, Chef’s Garden began making demands that Veggie U pay it a license fee for the use of the **VEGGIE U®** service mark.

53. At no point over the preceding twelve years had Chef’s Garden objected to Veggie U’s use of the **VEGGIE U®** mark for its services.

54. At no point over the preceding twelve years had Chef’s Garden objected to Veggie U using “Veggie U” as its business name.

55. At no point over the preceding twelve years had Veggie U paid (or been asked to pay) Chef's Garden to use the **VEGGIE U®** mark for its services.

56. Since Veggie U's formation, Chef's Garden has known about Veggie U's use of the **VEGGIE U®** mark for its services.

57. Chef's Garden demands culminated with it sending a cease and desist letter to Veggie U on September 2, 2015.

58. In its cease and desist letter, Chef's Garden "insist[ed]" that Veggie U "cease all use of the [**VEGGIE U®**] mark and adopt a new mark." Chef's Garden further warned Veggie U to "stop this trademark infringement and these unfair business practices." Chef's Garden demanded that it "immediately receive a response" and that Veggie U "agree to stop all further infringement." The letter concluded with a demand that a timeline be provided for "the phase out of Veggie U." A copy of Chef's Garden's cease and desist letter to Veggie U is attached hereto as **Exhibit A**.

FIRST CLAIM FOR RELIEF
Declaratory Judgment Act, 28 U.S.C. § 2201

Declaration of Ownership

59. Veggie U incorporates by reference paragraphs 1 through 58 above as though fully set forth herein.

60. An actual and justiciable controversy has arisen and now exists between Veggie U and Chef's Garden concerning their respective rights to the **VEGGIE U®** mark.

61. Veggie U desires a judicial determination of its rights and duties and a declaration as to the parties' rights and obligations with respect to the **VEGGIE U®** mark.

62. A judicial determination is necessary and appropriate at this time under the circumstances so that Veggie U may ascertain its rights and duties with respect to the **VEGGIE U®** mark.

63. As outlined above, Chef's Garden does not have any valid statutory or common law trademark rights to the **VEGGIE U®** mark because Veggie U was the first to use the **VEGGIE U®** mark.

64. As outlined above, Chef's Garden does not have any valid statutory or common law trademark rights to the **VEGGIE U®** mark because Chef's Garden abandoned any rights it may have had in the **VEGGIE U®** mark. At the same time, Chef's Garden knew about and did not object to or attempt to stop Veggie U's continuous and extensive use of the **VEGGIE U®** mark.

65. Veggie U owns all statutory and common law rights to the **VEGGIE U®** service mark.

66. Veggie U seeks a declaration that it owns the **VEGGIE U®** mark and therefore the 2,837,309 Registration with the PTO should be amended and/or reformed to correctly reflect the ownership in the mark pursuant to 15 U.S.C. § 1119.

PRAYER FOR RELIEF

WHEREFORE, Veggie U prays for the following relief:

1. For a declaratory judgment that Veggie U owns all statutory and common law rights to the **VEGGIE U®** service mark;
2. For a certified order to the Director of the Patent and Trademark Office to make an entry upon its records that Veggie U is the owner of the **VEGGIE U®** mark, Registration No. 2,837,309, under 15 U.S.C. § 1119;
3. For costs;
4. For attorney's fees; and
5. For such other and further relief as the Court may deem just and proper.

Dated: December 1, 2015

FRANTZ WARD LLP

By: /s/ Kelly Lawrence
Kelly Lawrence

Attorneys for Plaintiff
VEGGIE U

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and Local Rule 38.1,
Plaintiff demands a trial by jury.

Dated: December 1, 2015

FRANTZ WARD LLP

By: /s/ Kelly Lawrence
Kelly Lawrence

Attorneys for Plaintiff
VEGGIE U